

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Arling et al.)	Examiner:	Yenke, Brian P.
)		
Serial No.:	09/718,931)	Art Unit:	2614
)		
Filed:	November 21, 2000)	Attorney Doc.:	81230.578001
)		
Title:	Media Return System)		

REQUEST FOR REHEARING

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 CFR § 41.52, Appellant hereby requests a rehearing of the subject appeal. This request is being filed within two months of the date of original decision, October 27, 2008.

Appellant is requesting a rehearing because the original decision evidences that the Board misapprehended or overlooked Appellant's argument that the rejection of the claims under 35 U.S.C. § 102 in view of Hesse (U.S. Patent No. 5,287,109) could not be maintained for the reason that Hesse does not disclose, teach, or suggest the claimed element of starting a timer in response to a user action with a remote control. (App. Br., pgs. 4-5).

That this argument was not considered (and accordingly not addressed) by the Board is evidenced by the fact that the Board only considered: 1) whether a Hesse determination of time using a real time clock would be construed by a skilled artisan as the recited "timer for timing a

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By: _____

Gladys Negron-Munoz

predetermined interval,” and 2) if so, whether the Hesse disclosed programmable remote control “auto” mode procedure teaches “transmit[ting]...a command signal...to cause the media device to return to the primary channel.” (Opinion, pg. 6).

As concerns the argument that Hesse fails to disclose, teach, or suggest starting a timer *in response to* a user action, Appellant noted that Hesse discloses a remote control that is programmed by inputting a sequence of commands (e.g., the date and the real time an appliance should be turned on **and** the date and the real time the appliance should be turned off) which commands are carried out *in response to the real time clock achieving the scheduled real times* thereby eliminating any need to manually operate the remote control once it has been programmed. (Col. 3, lines 49-52 and Col. 9, lines 6-19). Thus, Appellant argued that Hesse fails to disclose starting any time measured operation in response to a user action with the remote control as is claimed. For at least this reason, Appellant submitted that the rejection of the claims under 35 U.S.C. § 102 in view of Hesse must be withdrawn. (Reply Brief, pgs. 2, 3).

In the opinion of the Board, the Board did not address whether or not Hesse discloses, teaches, or suggests a timer that is caused to be started in response to a user action with a remote control as is claimed. Nevertheless, the Board found that Hesse discloses a remote control wherein manual entries are provided to program a remote control “with specific user requests...to be [performed] automatically at different times.” (Hesse, col. 3, ll. 24-28) - such as “switch[ing] channels at different times of the day” (Hesse, col. 2, ll. 1-10) - and that the Hesse remote control includes a memory for storing entered “commands including time of command information” that are utilized to “only [transmits command signals] when the time of command information in the memory matches the time on the real time clock.” (Opinion, pgs. 7 and 10, emphasis added). Thus, by these finding, it is respectfully submitted that it is evident that Hesse

does not disclose, teach, or suggest “starting a timer in response to a second predetermined user action, and in response to expiration of the predetermined interval...causing the wireless transmitter of the remote control to transmit to the media device a command signal...” as is claimed. Rather, as noted by the Board, Hesse discloses nothing more than a remote control that performs operations in response to the time of command information in memory matching the time on the Hesse real time clock.¹ (Opinion, pg. 8).

As was further argued by Appellant, the distinction between using a timer which times a predetermined time interval and which is started in response to a user action as claimed as opposed to the use of a real time clock and user established, singular points in exact time as disclosed in Hesse is illustrated when considering the exact application for which the claimed invention is advantageously used. In this regard, the use of a user started timer to measure a predetermined time interval allows the claimed remote control to be repeatedly and instantly used any time a commercial might appear on a media playing device to provide a return to channel scanning operation. Meanwhile, to use the system described within Hesse for this same purpose a user would have to anticipate and enter into the memory of the Hesse remote control the exact, singular point in real time a commercial is to start as well as the exact, singular point in real time the commercial is to end with any resulting action performed in response to the real time clock achieving a user entered time being unrepeatable until such time as the remote control of Hesse is further programmed in this same manner. (Reply, pgs. 4-5).

Believing that Hesse fails to disclose the identical invention in as complete detail as is contained in the claims, e.g., Hesse fails to disclose, teach, or suggest starting a timer in response

¹ That Hesse fails to explicitly disclose a remote control in which a user action starts a timer of the remote control that times a predetermined time interval and which is caused to transmit a command signal to return a media playing device to a primary channel upon expiration of the predetermined time interval as timed by the user started timer was also acknowledged by the Examiner. (Examiner's Answer, pg. 6).

to user input, it is again respectfully requested that the rejection of the claims under 35 U.S.C. § 102 in view of Hesse be withdrawn.

Conclusion

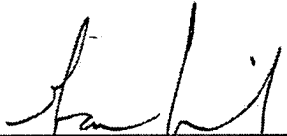
It is respectfully submitted that the application is in good and proper form for allowance. Such action of the part of the Board is respectfully requested.

While it is not believed that any fees are due, the Commissioner is authorized to charge any fee requirements to Deposit Account No. 502428 in the name of Greenberg Traurig.

Respectfully Submitted;

Date: December 17, 2008

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